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No. 02-1609

IN THE

Supreme Court of the United States

THE CITY OF LITTLETON, COLORADO,
Petitioner,

v.

Z.J. GIFTS D-4, L.L.C., a Limited Liability Company, dba Christal's,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF OF AMERICAN BOOKSELLERS FOUNDATION FOR FREE EXPRESSION, ASSOCIATION OF AMERICAN PUBLISHERS, INC., COMIC BOOK LEGAL DEFENSE FUND, FREEDOM TO READ FOUNDATION, INTERNATIONAL PERIODICAL DISTRIBUTORS ASSOCIATION, PUBLISHERS MARKETING ASSOCIATION, and VIDEO SOFTWARE DEALERS ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

MICHAEL A. BAMBERGER
Sonnenschein Nath & Rosenthal LLP
1221 Avenue of the Americas
New York, New York 10020
(212) 768-6700
Counsel for *Amici Curiae*

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BRIEF OF *AMICI CURIAE* IN SUPPORT OF RESPONDENT

STATEMENT

American Booksellers Foundation for Free Expression, Association of American Publishers, Inc., Comic Book Legal Defense Fund, Freedom to Read Foundation, International Periodical Distributors Association, Publishers Marketing Association and the Video Software Dealers Association submit this joint *amicus* brief in support of respondents, urging that this Court affirm the decision of the court below.[1] This brief is submitted upon the blanket consents of counsel to petitioner and respondent, filed with the Court.

INTEREST OF *AMICI*

Amici's members (hereinafter "*amici*") own and operate retail establishments which rent and sell books, magazines, videos, sound recordings, and printed materials of all types, including materials that are scholarly, literary, artistic, scientific and entertaining, or publish, distribute and are consumers of materials sold in such retail establishments. Libraries and librarians represented by the Freedom to Read Foundation provide such materials to readers and viewers.

Zoning and business regulatory ordinances applying limitations and restrictions based on the sexually explicit

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[1] A description of the *amici* is attached as Appendix B.

Pursuant to Rule 37.6 of the rules of the Court, counsel for the *amici curiae* discloses that he authored the brief in whole. No person or entity, other than Media Coalition, Inc., a trade association of which *amici curiae* are members or with which they are affiliated, and of which the parties in this action are not members, made a monetary contribution to the preparation or submission of the brief.

nature of First Amendment-protected material sold or displayed by retail establishments are proliferating, justified by the alleged negative impact of such establishments on their communities. As described more fully below, over the years the definitions of "adult use," "adult business," and "adult bookstore" in such ordinances have expanded in scope so that today they often do not comport with the common understanding of those terms. In many cases, as, for example, when defining adult businesses to include retailers deriving merely 10% of their income from material having sexual content, these ordinances apply even to retailers whose predominant product lines have no sexual content, explicit or otherwise.

In the past, many of the *amici* have brought actions in both federal and state courts to assert the unconstitutionality of laws infringing on First Amendment rights. *See, e.g., Virginia v. American Booksellers Ass'n, Inc.*, 484 U.S. 383 (1988); *American Booksellers Ass'n, Inc. v. Hudnut*, 771 F.2d 323 (7th Cir. 1985), *aff'd*, 475 U.S. 1001 (1986); *ACLU v. Johnson*, 194 F.3d 1149 (10th Cir. 1999), *aff'g*, 4 F. Supp. 2d 1029 (D.N.M. 1998); *PSInet Inc. v Chapman*, 108 F. Supp. 2d 611 (W.D. Va. 2000); *American Library Ass'n v. Pataki*, 969 F. Supp. 160 (S.D.N.Y. 1997); *American Booksellers Ass'n, Inc. v. McAuliffe*, 533 F. Supp. 50 (N.D. Ga. 1981); *Davis-Kidd Booksellers, Inc. v. McWherter*, 866 S.W.2d 520 (Tenn. 1993); *Leech v. American Booksellers Ass'n, Inc.*, 582 S.W.2d 738 (Tenn. 1979). They have also filed *amicus* briefs in the Court to advise it as to the impact of its decisions with respect to regulation of sexually frank speech on mainstream creators, producers, distributors and retailers. *See, e.g., City of Los Angeles v. Alameda Books, Inc.*, 536 U.S. 921 (2002); *City News and Novelty, Inc. v. City of Waukesha*, 531 U.S. 278 (2001); *United States v. Playboy Entm't Group*, 529 U.S. 803 (2000); *Denver Area*

Educ. Telcoms. Consortium v. FCC, 518 U.S. 727 (1996); *United States v. X-Citement Video*, 513 U.S. 64 (1994).

SUMMARY OF ARGUMENT

In *Freedman v. Maryland*, 380 U.S. 51 (1965), this Court held that certain procedural limitations on the operations of a censorship board decision-maker are required by the First Amendment. Many of these limitations relate to the imposition of discrete time limits so that unreviewable censorship is not achieved by inaction. This Court subsequently held in *FW/PBS, Inc. v. City of Dallas* that at least two of these limitations – that any restraint prior to judicial review can be imposed only for a specified brief period during which the status quo must be maintained and that expeditious judicial review be available – apply equally to licensing of businesses that sell First Amendment-protected materials. 493 U.S. 215, 228 (1990)

It is undisputed that the Littleton ordinance at issue here imposes no time limit on the available judicial review; there is no requirement of expeditious judicial review. Nor does it, in the context of renewals, require maintenance of the status quo during the judicial review period so that the retailer can avoid premature and possibly wrongful closure.

It is both intolerable and unconstitutional to permit an existing business selling First Amendment-protected material to be closed or such a proposed business to be prevented from commencing business while waiting for a court to render an opinion concerning judicial review of a decision to revoke or deny a business license. Even if a court subsequently reverses the revocation or denial of the license, the business' First Amendment rights will have been infringed, because "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes

irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976)

City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986), and its progeny dealt with regulation of "adult businesses" as that term is commonly understood, namely businesses that exclude minors and whose inventory is predominantly sexually explicit in nature. The rationale of the Court in permitting such regulation of businesses engaged in the sale, rental or offering of First Amendment protected speech was that such regulation "represents a valid governmental response to the 'admittedly serious problems' created by adult theatres," and therefore was not content-based. 475 U.S. at 54. With the passage of time, however, municipalities have expanded and loosened the definition of adult business so that even mainstream business with only a minor portion of their business, inventory or display space devoted to material with sexual content fall within the scope of adult business regulation.

This creeping expansion has resulted in regulation of First Amendment-protected business as to which there are no readily apparent negative secondary effects as required by *Renton*, suggesting that the real purpose of such ordinances is not zoning directed at the avoidance of negative secondary effects, but rather is to make it more difficult to distribute, or even to suppress the sale of, these protected works in a given municipality.

Amici are mainstream providers of speech in a variety of fora and media. As more and more "adult use" regulations are applied to mainstream bookstores and video stores by stretching definitions beyond their normally understood meanings, the regulations restrict protected speech in a manner antithetical to the First Amendment, stigmatize retailers who deal in these protected materials, and chill such retailers from stocking and selling First Amendment-

protected mainstream materials which describe or portray sexual matters, either in a fictional or non-fictional context. The failure to have a prompt judicial decision reviewing such licensing decisions compounds such restriction, stigmatism and chill.

ARGUMENT

I
A RIGHT TO PROMPT JUDICIAL REVIEW IS OF LITTLE MEANING UNLESS IT INCLUDES A RIGHT TO A PROMPT DECISION

In *Freedman v. Maryland*, 380 U.S. 51 (1965), this Court held that certain procedural limitations on a censorship board decision-maker are required by the First Amendment. Many of those limitations relate to the imposition of discrete time limits so that censorship is not achieved by inaction. This Court subsequently held in *FW/PBS, Inc. v. City of Dallas* that at least two of these limitations – that any restraint prior to judicial review can be imposed only for a specified brief period during which the status quo must be maintained and that expeditious judicial review be available – apply to the licensing of communicative First Amendment-protected businesses. 493 U.S. 215, 228 (1990)

The Littleton ordinance at issue in this case (Littleton, Colo. City Code §3-14-1, et. seq.) does not provide for judicial review. The relevant review provision asserted by the City is found in the Colorado Rules of Civil Procedure, which gives a party 40 days to seek review by certiorari.

Colo. R. Civ. P. 106(a)(4)[2]. There is, however, no provision imposing a time limit for a decision, or even requiring expeditious review. The provisions referred to by the City permit expedited treatment; they do not mandate it. Nor is there any requirement for the maintenance of the status quo while judicial review is pending.

Under *Freedman*, a "prompt final judicial decision" is required. 380 U.S. at 59. Similarly, *FW/PBS* requires "prompt judicial review in the event that the license is erroneously denied." 493 U.S. at 228. The procedures applicable in this case are constitutionally deficient under both these tests.

Some courts have read the *FW/PBS* test to require only prompt access, i.e., to prohibit preventing petitioner from requesting such review for some period of time. *See, e.g., Boss Capital, Inc. v. City of Casselberry*, 187 F.3d 1251, 1255 (11th Cir. 1999). This is an untenable interpretation which fails to comply with both the language and intent of this Court. *See, e.g., Nightclubs, Inc. v. City of Paducah*, 202 F.3d 884, 892-93 (6th Cir. 2000); *Baby Tam & Co., Inc. v. City of Las Vegas*, 154 F.3d 1097, 1101 (9th Cir. 1998).

Prompt access alone is a meaningless right. When a retailer is faced with closing or is being prevented from opening, the ability promptly to file for judicial review has little value unless accompanied by a prompt decision and an

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[2] The review is also limited in scope, to whether the City "exceeded its jurisdiction or abused its discretion." Colo. R. Civ. P. 106(a)(4)(I). The cases define abuse of discretion as having "no competent evidence" to support the decision to restrict protected First Amendment activities (*City of Colorado Springs v. Givan*, 897 P.2d 753, 756 (Colo. 1995)), certainly a slender reed upon which to rely.

intermediate stay. A prompt filing followed by a judicial reversal two years later does not adequately protect the First Amendment rights of the vindicated business. Counsel for *amici* is unaware of any judicial system which grants judicial review but prevents petitioner from requesting such review for some period of time. And few, if any, administrative procedures impose a delay between the issuance of a denial and issuance of the final appealable order. Thus a "right" to prompt access is always available, but gives the petitioner nothing of value.

As the Ninth Circuit pointed out in *Baby Tam*,

> The phrase "judicial review" [in *FW/PBS*'s requirement of "prompt judicial review"] compels this conclusion. The phrase necessarily has two elements – (1) consideration of a dispute by a judicial officer, and (2) a decision. Without consideration, there is no review; without a decision, the most exhaustive review is worthless. In baseball terms it would be like throwing a pitch and not getting a call. As legendary major league umpire Bill Klem once said to an inquisitive catcher: "It ain't nothin' till I call it." This is also true of judicial review. Until the judicial officer makes the call, it ain't nothin'.

154 F.3d at 1101-02.

Rather, to effectuate the intent of both the *Freedman* and *FW/PBS* Courts, and to protect First Amendment rights, there must be an expedited, prompt judicial decision, so that the vendor of First Amendment-protected material is not left in limbo. In such a case, even more than usual, the adage that "justice delayed is justice denied" is applicable,

particularly since "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

II
THE EXPANSION OF THE DEFINITION OF "ADULT BOOKSTORES" AND "ADULT BUSINESS" TO INCLUDE MAINSTREAM RETAILERS HIGHLIGHTS THE BREADTH OF THE CONCERN

Amici, general bookstores and other retailers of constitutionally protected communications, would be directly affected by the absence of a prompt and meaningful judicial review. *Amici* do not include "adult" retailers as that term is commonly used, but rather mainstream establishments, whose predominant products are not sexually explicit or even sexually related, although many stock some products which could be considered relevant under typical zoning or business license ordinances. However, ordinances that potentially apply to such mainstream establishments are proliferating.

City of Renton v. Playtime Theatres Inc., 475 U.S. 41 (1986), and its progeny dealt with regulation of "adult businesses" as that term is commonly understood, namely businesses that exclude minors and whose inventory is predominantly sexually explicit in nature. The rationale of the Court in permitting such regulation of businesses engaged in the sale, rental or offering of First Amendment protected speech was that such regulation "represents a valid governmental response to the 'admittedly serious problems' created by adult theatres," and therefore was not content-based. 475 U.S. at 54. With the passage of time, however, municipalities have expanded and lessened the definition of adult businesses so that even mainstream businesses with only a minor portion of their business, inventory or display

space devoted to material with sexual content fall within the scope of adult business regulation.

Recently municipalities have expanded the definition of the entities covered by "adult use" zoning ordinances so that they include mainstream retailers whose inventory and marketing approach is mainstream, not highlighting the sexual content of some of their book, film or periodical inventory. Municipal ordinances now in effect are not limited to retailers predominantly offering sexually explicit materials. As little as 10% of floor space (Edina, Minn., City Code, §850.03 (subd. 3)), 15% of display, shelf, rack, table or floor area (Fitchburg, Mass., City Code, §181-18.2(A)(1); Minneapolis, Minn., Code of Ordinances, §549.340), 15% of gross revenues or inventory (Rockwall, Tex., City Code, §27-1(2)), 150 square feet of floor space for display (St. Paul, Minn., Legislative Code, §60.200) devoted to material emphasizing the description or depiction of sexual matter qualifies a retailer as an "adult bookstore" or "adult business."[3] These ordinances all regulate far more than what the public considers "adult businesses." In St. Paul, Minnesota, for example, a general bookstore with a section on relationships and sexual manuals exceeding ten feet by fifteen feet is defined and would be regulated as an "adult bookstore."

An even more insidious Catch-22 applies where the ordinance defines an "adult" business as one which has a segregated section of "adult" material. City of Council Bluffs, Iowa, Ordinances §15.03.021. Under such an ordinance, a mainstream retailer who chooses to accommodate its more sensitive customers by segregating some more frank sexual materials finds itself branded as an "adult bookstore."

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3 *See* excerpts in Appendix A hereto.

While, as Shakespeare noted, "a rose by any other name would smell as sweet" because it would still be a rose, calling a rose poison ivy does not make it so. Similarly, statutorily defining a mainstream retailer as an adult business does not make it one, and labeling it such does not mean it would have negative secondary effects on its neighborhood.[4]

The lower the threshold created by the ordinance, the more intense is the economic pressure on mainstream businesses to cease selling any constitutionally-protected sexually frank material which might trigger the zoning restriction. A traditional "adult business," with admission restricted to adults, has an inventory which is virtually exclusively of interest to those who would enter such an establishment seeking sexually explicit material. Thus, in a municipality in which a *Renton*-type zoning ordinance is in effect, the choice for such a business is to geographically comply or to go out of business. Since such a business relies on a consumer base seeking its products, presumably many customers will seek them out wherever they locate.

The situation is different in the case of a mainstream book or video retailer, which carries a wide range of material, most of which has little or no sexual content. It is not an "adult bookstore" in the usual meaning of the term, and does not advertise or promote itself as such. But with thresholds in ordinances as low as 10% of total display area, stock or gross income devoted to material "emphasizing" sexual matters, or, as in Mesa, Arizona, having a significant portion of its gross income in *any one month* derive from the sale or

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4 *See, e.g., Encore Videos, Inc. v. City of San Antonio*, 330 F.3d 288 (5th Cir. 2003) (studies finding negative secondary effects from video retailers offering on-premises viewing do not support ordinance applying to retailers selling only for off-premises viewing).

rental of sexually explicit material (City Code § 6-16(D)), a proprietor of a general bookstore or video store must be concerned. The likelihood is that the proprietor will self-censor First Amendment-protected materials to stay well clear of the zoning requirement since location is significant to economic viability.

An equally chilling effect on First Amendment rights is caused by ordinances such as Littleton's before the Court in this case, which apply to a retailer which devotes a "significant or substantial portion" of its space or inventory, or which derives a "significant or substantial portion" of its revenues, or which spend a "significant or substantial portion" of its advertising revenues to sexually explicit materials. There is no definition of "significant" or "substantial," leaving mainstream retailers guessing — a situation abhorrent in the First Amendment context. *See Smith v. California*, 361 U.S. 147, 151 (1959) ("[S]tricter standards of permissible statutory vagueness may be applied to a statute having a potentially inhibiting effect on speech; a man may the less be required to act at his peril here, because the free dissemination of ideas may be the loser.")

Nor are these ordinances limited to restricting the location of the retailer (though that, alone, constitutes a significant business restriction). Mesa, Arizona, for example, requires that the proprietor or anyone having a 10% interest in the business be licensed (City Code, §§ 6-16-3,4), requires that employees be licensed as "sexually oriented business employees" (City Code, §6-16-3(A)(2)), limits the hours of the retailer (City Code, §6-16-14), and imposes licensing fees of $500 per establishment and $50 per employee (City Code, §6-16-5). These requirements impose additional business costs on mainstream retailers incidentally carrying sexually-related constitutionally-protected materials, and also stigmatizes them and their employees.

Further, even if a prompt decision is required, and even more so if it is not, an existing seller of First Amendment-protected materials must be permitted to remain open pending judicial review of a decision to revoke or deny a business license, or of a decision to shutter the establishment because of an alleged zoning violation. To do otherwise would be to infringe the retailer's First Amendment rights, even if judicial review subsequently reverses the revocation or denial. The closing of any retail establishment obviously has a major impact on its business, from which it may never recover, even if it is subsequently permitted to reopen. Furthermore, during the closure period, the retailer will not know whether or when it may reopen. The only practical alternative for the retailer would be to self-censor by eliminating from its stock the First Amendment-protected materials which might possibly bring the establishment within the purview of the regulatory statute or ordinance. In either event, First Amendment rights are chilled, a prior restraint is achieved, and protected materials are not available at the location. That is not a result anticipated or permitted by *Freedman*, *FW/PBS* and the First Amendment.

CONCLUSION

Amici urge this Court to reverse the decision below on the ground that the Littleton ordinance and Colorado statutes neither require a prompt judicial review determination, nor require maintenance of the status quo pending such determination, and that such provisions are required by the First Amendment.

Dated: January 23, 2004

Respectfully submitted,

Michael A. Bamberger
Sonnenschein Nath & Rosenthal LLP
1221 Avenue of the Americas
New York, New York 10020
(212) 768-6700

Counsel for *Amici Curiae*

APPENDIX A: EXCERPTS FROM SAMPLE ORDINANCES

1. COUNCIL BLUFFS, IOWA, ORDINANCES, SECTION 15.03.021:

"Adult bookstore" means an establishment that has a substantial or significant portion of its stock in trade in, or that has a segment or section devoted to the sale or display of books, magazines or other periodicals, videos, tapes, holographs or holograms, sexually-oriented paraphernalia, movies, games, materials, visual images or similar devices, along or in combination with each other, all or any of which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to "specified anatomical areas" or 'specified sexual activities" as defined in Sections 15.03.605 and 15. 03.606, respectively.

2. EDINA, MN, CITY CODE, SECTION 850.03 (SUBD. 3):

The following words, terms and phrases, as used herein, have the following meanings:

* * *

Adult Bookstore. An establishment or business which barters, rents or sells items consisting of printed matter, pictures, slides, records, audio tape, videotape, or motion picture film and either alone or when combined with Adult Motion Picture Rental or Sales and Adult Novelty Sales within the same business premises has either 10 percent or more of its stock in trade or 10 percent or

more of its floor area containing items which are distinguished or characterized by an emphasis on the depiction or description of Specified Sexual Activities or Specified Anatomical Areas.

3. FITCHBURG, MA, CITY CODE, SECTION 181-18.2(A)(1):

* * *

(1) ADULT BOOKSTORE or ADULT VIDEO STORE - A business that devotes more than 15% of the total display, shelf, rack, table, stand or floor area, utilized for the display and sale of the following:

(a) Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records, CD-ROMs or other forms of visual or audio representations which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in M.G.L. C. 272 S.31, . . .

4. MESA, AZ, CITY CODE, TITLE 6, CHAP. 16, SECTION 6-16-1:

* * *

ADULT BOOKSTORE, ADULT NOVELTY STORE, OR ADULT VIDEO STORE: A commercial establishment which offers sexually explicit material for sale or rental, for any form of consideration, and

meets any of one (1) or more of the following criteria:

(A) That has thirty percent (30%) or more of its inventory, stock, or merchandise on hand at any time that is comprised of sexually explicit material; or

(B) That has a substantial or significant portion of its inventory, stock, or merchandise on hand at any time that is comprised of sexually explicit material; or

(C) That derives thirty percent (30%) or more of its gross income for any one (1) calendar month from the sale or rental, for any form of consideration, of sexually explicit material; or

(D) That derives a substantial or significant portion of its gross income for any one (1) calendar month from the sale or rental, for any form of consideration, of sexually explicit material; or

(E) That at any time displays sexually explicit material either in a display area that is thirty percent (30%) or more of its total display area or on a floor area equal to at least two hundred (200) square feet. For purposes of calculating the floor area, the business premises shall be viewed from above in two (2) dimensions and all areas

that are reserved for foot traffic shall be included; or

(F) That displays a substantial or significant amount of sexually explicit material in its display area.

5. MINNEAPOLIS, MN, CODE OF ORDINANCES, SECTION 549.340:

* * *

Adults-only bookstore or video store. An establishment having as a substantial or significant portion of its stock in trade for sale, rental or display, books, magazines, periodicals, films, videos, digital video disks, slides, or other media, which are distinguished or characterized by an emphasis on matters depicting, describing or relating to nudity, sexual conduct, sexual excitement or sadomasochism, or an establishment with a segment or section devoted to the sale, rental or display of such material which comprises fifteen (15) percent or more of the total sale, rental or display area of such establishment, or five hundred (500) square feet, whichever is less. An adults-only bookstore or video store also shall include an establishment that offers films, videos, digital video disks, slides or similar media for viewing on premises.

6. ROCKWALL, TX, CITY CODE, SECTION 27-1(2):

* * *

(2) *Adult bookstore* or *adult video store* means a commercial establishment which as a principal business purpose openly advertises or displays or offers

for sale or rental for any form of consideration any one or more of the following:

(a) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slices, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas:; or

(b) Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."

As used herein, "principal business purpose" shall include any business activity which accounts for fifteen (15) per cent or more of the following: (I) gross revenues of the business; (ii) floor area of the business; or (iii) inventory.

7. ST. PAUL, MN, LEGISLATIVE CODE, SECTION 60.200:

* * *

Adult bookstore. Adult bookstore means a building or part of a building used for the barter, rental or sale of a significant portion of items consisting of (1) instruments, devices or paraphernalia which are designed for use in

connection with "specified sexual activities," or (2) printed matter, pictures, slides, records, audio tape, videotape, motion picture film, or CD Roms or another form of recording if such items are distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas." "Significant portion of items" shall mean more than fifteen (15) percent of usable floor area or more than one hundred fifty (150) square feet of floor area used for the display and barter, rental or sales of such items. No obscene work shall be allowed.

APPENDIX B: THE *AMICI*

The American Booksellers Foundation for Free Expression ("ABFFE") was organized in 1990. The purpose of ABFFE is to inform and educate booksellers, other members of the book industry, and the public about the dangers of censorship and to promote and protect the free expression of ideas, particularly freedom in the choice of reading materials.

The Association of American Publishers, Inc. ("AAP") is the national association of the U.S. book publishing industry. AAP's members include most of the major commercial book publishers in the United States, as well as smaller and non-profit publishers, university presses and scholarly societies. AAP members publish hardcover and paperback books in every field, educational materials for the elementary, secondary, postsecondary, and professional markets, computer software, and electronic products and services. The Association represents an industry whose very existence depends upon the free exercise of rights guaranteed by the First Amendment.

The Comic Book Legal Defense Fund ("CBLDF") is a non-profit corporation dedicated to defending the First Amendment Rights of the comic book industry. CBLDF, which has it principal place of business in Northampton, Massachusetts, represents over 1,000 comic book authors, artists, retailers, distributors, publishers, librarians, and readers located in Arkansas, throughout the country and the world.

The Freedom To Read Foundation is a not-for-profit organization established in 1969 by the American Library Association to promote and defend First Amendment rights, to foster libraries as institutions that fulfill the promise of the First Amendment for every citizen, to support the right of

libraries to include in their collections and make available to the public any work they may legally acquire, and to establish legal precedent for the freedom to read of all citizens.

The International Periodical Distributors Association is the trade association for the principal national periodical distributors engaged in the business of distributing or arranging for the distribution of paperback books and periodicals to wholesalers throughout the United States for ultimate distribution to retailers and the public.

The Publishers Marketing Association (PMA) is a nonprofit trade association representing more than 3,700 publishers across the United States and Canada. PMA members publish and distribute mainstream books on a variety of topics including marriage, sex education, family and relationships, self help, art photography, glamour photography, photo techniques, as well as erotic fiction and romance novels. "Adult business" ordinances would chill its members' expressive activities by limiting the availability of legal materials to adults."

The Video Software Dealers Association (VSDA) is the trade association for the home video industry. It represents more than 1,200 member companies in the United States, Canada and a dozen other countries, including retailers of motion picture videos and video games, the home video divisions of major and independent motion picture studios, video game and multimedia producers, and other associated businesses that comprise the home video entertainment industry. VSDA retailer members sell and rent both non–sexual and sexually oriented material and thus may be subject to "adult business" ordinances.